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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,262	03/26/2004	Sandra M. Achle (nee Kelly)	MEG-210.0 US-1	1654

7590 08/10/2005

## YANKWICH & ASSOCIATES

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201 Broadway  
Cambridge, MA 02139

EXAMINER
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HINES, JANA A

ART UNIT	PAPER NUMBER
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1645

DATE MAILED: 08/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



**DETAILED ACTION**

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 26-29 are drawn to a domestic bird vaccinated by a whole-body spray, classified in class 800, subclass 19.
  - II. Claims 30-38 are drawn to a vaccination kit, classified in class 436, subclass 808.
2. The inventions are distinct, each from the other because of the following reasons.
  - A) Inventions I and II are related as apparatus and product made. The inventions in this relationship are distinct if either or both of the following can be shown: (1) that the apparatus as claimed is not an obvious apparatus for making the product and the apparatus can be used for making a different product or (2) that the product as claimed can be made by another and materially different apparatus (MPEP § 806.05(g)). In this case, a domestic vaccinated bird can vaccinated with the commercially available GARAVAX-T<sup>TM</sup> vaccine from Schering Plough Animal Health Corp. Moreover, spray and aerosol vaccinations have been previously reported for enteropathogenic bacteria, see the instant specification at page 4, lines 12-24. Thus, the domestic bird as claimed can be made by another and materially different apparatus or kit. Therefore, the inventions in this relationship are distinct.

Furthermore, searching the inventions of groups I and II together would impose a serious search burden. In the instant case, the search of domestic birds and vaccination kits are not coextensive. The inventions of Groups I and II have a separate

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status in the art as shown by their different classifications. There is a search burden also in the non-patent literature. Group I encompasses vaccinated birds which were vaccinated by a whole body spray which is not required for the search of Group II. In contrast, the search for group II would require a text search for the vaccination kit which includes a live avirulent strain, a suitable diluent and instructions. Thus the prior art could teach a vaccination kit that would not necessarily be applicable to the domestic bird. Moreover, even if the domestic bird product were known, the vaccination kit may be novel and unobvious in view of the preamble or active components.

3. Because these inventions are distinct for the reasons given above, have acquired a separate status in the art as shown by their different classification and have divergent subject matter, the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

4. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).


or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ja-Na Hines whose telephone number is 571-272-0859. The examiner can normally be reached on Monday-Thursday and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith can be reached on 571-272-0864. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ja-Na Hines   
August 4, 2005